



Courtesy: House Education & the Workforce Committee

Congressional Panel Hears Federal Immigration Official Detail Flaws in 1986 Immigration Law, Employers Embrace Added Responsibility in Fight against Illegal Immigration

*Human Resources Manager Questions 'Burdensome' Provision in Senate-
Passed Immigration Bill*

PLANO, TX – Testifying today before the U.S. House Employer-Employee Relations Subcommittee, a Dallas-based federal immigration enforcement official shed light on flaws in employer-related provisions in an often-criticized 1986 immigration law, while employers told the panel of their willingness to accept greater responsibility as Congress works to send President Bush legislation to strengthen penalties against those who knowingly hire illegal immigrants. The hearing marked the first planned during Congress' summer district work period. More than 20 hearings are planned by House committees over the next five weeks.

"Our economic opportunities are legendary," said Sam Johnson (R-TX), who represents Plano in the House and chairs the subcommittee. "A legal workforce is welcome, but an illegal workforce undermines our nation's security. It's safe to assume that many illegal aliens in our country are doing what we're all doing: working hard to make a good life for themselves and their children. What is different about them is they have broken the law to do so."

Subcommittee Member Joe Wilson (R-SC) highlighted the importance of holding border security hearings outside the Washington, D.C. beltway, noting, "I believe that as House Republicans take our case to the American people in August with such hearings as we are conducting today, we will hear the same response: the American people understand the stark differences between the House bill and the Reid-Kennedy (Senate) bill."

Johnson and Wilson both underscored the responsibility of employers to ensure those they hire are, in fact, legal to work on American soil. Under current law, employers are required to inspect government-issued identification to assure that an individual is eligible to work and must require that an employee complete an I-9 form to attest to their work eligibility. In addition to the paper-based system, employers may elect to participate in an electronic-based system established in 1996. Participants in this "Basic Pilot Program" electronically verify employees' work eligibility through the Social Security Administration and Department of Homeland Security. A border security and enforcement bill passed by the U.S. House last December would strengthen financial penalties and increase the potential for jail for employers who knowingly violate the law.

John Chakwin, special agent in charge of the Immigration and Customs Enforcement agency's Dallas office, detailed flaws in current employment verification practices and enforcement.

"In the past, immigration investigators, to different degrees over the course of time, focused on worksite violations by devoting a large percentage of investigative resources to enforcement of the administrative employer sanctions provisions of [1986 Immigration Reform and Control Act]," Chakwin told the subcommittee. "The resulting labor-intensive inspections and audits of employment eligibility documents only resulted in serving businesses with a Notice of Intent to Fine or a compliance notice. Monetary fines that were routinely mitigated or ignored had little to no deterrent effect. The results were far from effective and the process involved endless attorney and agent hours in discovery and litigation to adjudicate and resolve cases. Egregious violators of the law viewed the fines as just a 'cost of doing business' and therefore the system did not serve as a true economic inducement for them to change their business model."

To help overcome these flaws, the House-passed border security and enforcement bill would increase the number of employers who would be required to use the electronic-based Basic Pilot Program. Jon Luther, chief executive officer of Dunkin' Donuts, told the panel of his company's success in using the currently-voluntary Basic Pilot Program to ensure it is hiring authorized workers.

"As of June 1, the use of the Basic Pilot Program has been required of all of our franchisees, and we have gotten broad-based acceptance," noted Luther.

“We do not have a wealth of experience so far, but based on preliminary canvassing of our system, the franchisees are finding the tool easy to learn and use. They have not experienced any real difficulty with resolving tentative non-confirmations (mismatches). Usually, the issue is caused by an input error by the franchisee, perhaps mixing up a first and middle name. In those situations in which there is a genuine mismatch, the circumstances strongly suggest that the employee was not a documented worker, meaning that they do not contest the results and do not return to work.”

While embracing added responsibility for ensuring potential employees are legal to work in the U.S., Geri Simmons – a human resources officer testifying on behalf of the Society for Human Resources Management (SHRM) – expressed concern about a provision of the Senate immigration bill passed in May. The provision – called “burdensome” and “unnecessary” by Simmons – would hold employers liable for illegal immigrants hired by their subcontractors. In contrast, the House-passed border security and enforcement bill requires the employer to have “actual knowledge” that a subcontractor is using unauthorized workers in order to be fined or sanctioned.

“[The Senate bill] places a new, untested standard on employers by requiring employers to attest in a contract with a subcontractor that the employer is not using the subcontractor to ‘knowingly or in reckless disregard’ hire labor irrespective of the individual’s work status,” said Simmons. “In addition to the new undefined standard, the Senate bill will place additional data collection and reporting requirements on employers to collect information from each of their subcontractors. SHRM believes these requirements are burdensome, unnecessary, and expose the employer to unwarranted penalties and fines for the actions of another employer.”

Simmons’ characterization of the Senate bill was consistent with that of other witnesses in previous Education & the Workforce Committee immigration hearings, some of whom deemed various Senate provisions “troubling.” Today’s hearing marked the third in an Education & the Workforce series of hearings on immigration issues impacting American workers and students. The next hearing – on the impact of illegal immigration on worker wages – will be held by the Workforce Protections Subcommittee on Monday, August 14, 2006 in Gainesville, Georgia.

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